

**U.S. Department of Labor**

Office of Administrative Law Judges  
800 K Street, NW, Suite 400-N  
Washington, DC 20001-8002

(202) 693-7300  
(202) 693-7365 (FAX)



**Issue Date: 23 June 2003**

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In the Matter of :

MARIA ELENA POMAR,  
Claimant

Case No.: 2001-LHC-910  
OWCP No.: 2-112702

v.

TROPICAL RESEARCH AND  
DEVELOPMENT, INC.,  
Employer

and

ACE, USA,  
Carrier

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**Appearances:**

Robert R. Johnson, Esq.  
Michael J. McHale, Esq.  
West Palm Beach, Florida  
For the Claimant

Keith L. Flicker, Esq.  
Flicker, Garelick & Associates  
New York, New York  
For the Employer/Carrier

Before: Alice M. Craft  
Administrative Law Judge

**DECISION AND ORDER GRANTING CLAIMANT'S REQUEST FOR  
MODIFICATION AND DENYING EMPLOYER/CARRIER'S REQUEST FOR  
MODIFICATION**

This proceeding relates to requests for modification of an award of benefits under the Longshore and Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. § 901, et seq., and implementing regulations found at 20 CFR Part 702, pursuant to a claim brought by Claimant Maria Elena Pomar against her Employer Tropical Research & Development, Inc., and its

insurance Carrier ACE, USA. The LHWCA is applicable to Ms. Pomar's claim by extension under the Defense Base Act, 42 U.S.C. § 1651 et seq. The LHWCA provides for payment of medical expenses and compensation for disability or death of injured employees. In this case, both parties seek modification of an award of permanent partial disability compensation awarded to Ms. Pomar as a result of complications following infection with malaria.

I conducted a hearing on this claim on July 25, 2001, in Fort Lauderdale, Florida. All parties were afforded a full opportunity to present evidence and argument, as provided in the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, 29 CFR Part 18. At the hearing, Claimant's Exhibits ("CX") 1-23 and 25-31,<sup>1</sup> and Employer's Exhibits ("EX") A-V, Y,<sup>2</sup> Z and AA were admitted into evidence without objection. Transcript ("Tr.") at 11-16, 18-21, 200 and 245. The record was held open after the hearing to allow the parties to submit additional evidence and argument. By order dated November 9, 2001, I admitted CX 14 page 13-a, and excluded CX 33.<sup>3</sup> By order dated December 13, 2001, I admitted CX 32 and EX W, BB, CC and DD. Claimant's Amended Exhibit List by Inter-Lineation, listing corrections to exhibits previously submitted, with attached summaries and back-up documentation for claimed medical expenses was provisionally admitted, subject to post-hearing objection by the Employer/Carrier, but was not assigned an exhibit number. Tr. at 14. No objections having been filed, I hereby admit it as CX 34. The parties submitted closing arguments, and the record is now closed.

In reaching my decision, I have reviewed and considered the entire record available to me, including all exhibits, the testimony at hearing and the arguments of the parties.

#### STATEMENT OF THE CASE

In this case, the parties seek modification of the Decision and Order - Awarding Benefits ("D&O") issued by Administrative Law Judge Paul H. Teitler on February 4, 1998, and filed in the office of the District Director on February 13, 1998. According to Judge Teitler's D&O, the Claimant was working as the head of a team of engineers and consultants working in Zambia when she was bitten by a mosquito and infected with malaria on July 1, 1993. The dispute

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<sup>1</sup>CX 24 was not offered.

<sup>2</sup>At the beginning of the hearing, the Employer/Carrier reserved the designations EX W and X for a post-hearing deposition of Dr. Krost, and a deposition of Ms. Pomar taken after the hearing before Judge Teitler. Tr. at 21. EX W, the deposition of Dr. Krost, was submitted after the hearing. The deposition of Ms. Pomar, EX X, was never submitted except for a short excerpt read into the record, Tr. at 185.

<sup>3</sup>When submitted, the latter exhibit was designated as CX 25, a number which had already been used. I have therefore re-numbered the excluded exhibit, a one-page, notarized letter to counsel for the Claimant from Alex Sarandrea dated July 31, 2001, to CX 33.

between the parties before Judge Teitler centered on whether the Claimant's subsequent chronic fatigue syndrome, fibromyalgia, anxiety and depression resulted from malaria and were therefore part of her work-related injury. Judge Teitler found that they were. He also found that the Claimant had reached maximum medical improvement on January 15, 1997, and that her disability became permanent on that date. Judge Teitler found that suitable alternative employment was established as of July 1994, when Claimant began doing part-time consulting work on a flexible schedule. Judge Teitler ordered that the Claimant was entitled to temporary total disability compensation from July 1, 1993, until July 1, 1994; temporary partial disability compensation from July 1, 1994, to January 15, 1997; permanent partial disability compensation from January 15, 1997 and continuing until further order; and reasonable, appropriate and necessary medical care and treatment, including reimbursement for unpaid medical bills.

In this proceeding, the Claimant seeks modification of Judge Teitler's D&O pursuant to Section 22 of the LHWCA, 33 U.S.C. § 922. She contends that her condition worsened and that she has been permanently totally disabled since April 15, 1998, because she is no longer able to do the field work required to be a consultant. She also alleges that the Employer/Carrier has failed to pay many of her medical bills as ordered by Judge Teitler. She seeks permanent total disability compensation, medical expenses, interest, costs and attorney fees.<sup>4</sup>

The Employer/Carrier also seeks modification of Judge Teitler's D&O. It contends that the Claimant's condition has changed for the better, and that it should be provided relief under Section 22 of the Act. The Employer/Carrier concedes that the Claimant is no longer able to perform field work, but argues that she is able to work at home as a translator at equal or greater wages than the earning capacity found by Judge Teitler. Thus it maintains that Claimant's compensation benefit entitlement should be reduced or discontinued, or, in the alternative, that her petition for modification should be denied.

The file transmitted to the Office of Administrative Law Judges for hearing contained the transcript of the hearing before Judge Teitler, as well as his D&O. The exhibits from the proceeding before Judge Teitler could not be located. I advised the parties at hearing that the hearing exhibits were not in the file and gave them the opportunity to submit them after the hearing. Tr. at 8. The transcript was admitted into the record before me as CX 3. Judge Teitler's D&O was admitted as CX 2 and EX A. Little of the medical evidence before Judge Teitler has been introduced into the record before me.

## ISSUES

The issues before me are:

1. Whether either party is entitled to modification under Section 22 of the LHWCA.

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<sup>4</sup>Although Claimant initially sought penalties, the claim for penalties was dropped in post-hearing briefing.

2. Whether the Employer/Carrier is responsible for medical expenses paid by the Claimant or which remain unpaid.

## STANDARDS FOR MODIFICATION

Section 22 of the LHWCA provides in pertinent part:

. . . [U]pon the application of any party in interest . . ., on the ground of a change in conditions or because of a mistake in a determination of fact . . . the deputy commissioner may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued . . . review a compensation case . . . and . . . issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury, and if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation, in such manner and by such method as may be determined by the deputy commissioner with the approval of the Secretary. . . .

33 U.S.C. § 922. Traditional notions of res judicata do not govern Section 22 modification proceedings, which may be brought whenever changed conditions or a mistake in a determination of fact makes modification desirable in order to render justice under the LHWCA. *Bath Iron Works Corp. v. Director, OWCP*, 244 F.3d 222, 227 (1<sup>st</sup> Cir. 2001). In this case, neither party has alleged that Judge Teitler made a mistake in a determination of fact. Rather, both have argued that changed conditions require modification of the compensation award.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Stipulations

The parties were able to reach the following Stipulations:

1. The parties are subject to the Defense Base Act/LHWCA.
2. The Claimant and the Employer were in an employer/employee relationship.
3. The date of injury was July 1, 1993.
4. The injury occurred in Zambia.

5. The injury arose out of and in the course of Claimant's employment with the Employer
6. The Employer had timely notice of the injury.
7. The Claimant filed a timely claim.
8. The Claimant's average weekly wage at the time of the injury was \$1,345.15.
9. Judge Teitler found the Claimant's post-injury wage earning capacity to be \$440.00 per week.
10. Judge Teitler awarded permanent partial disability compensation at the rate of \$603.37 per week.

Parties' Pretrial Statements; Tr. at 9-10.

These stipulations have been admitted into evidence and are therefore binding upon the Claimant and Employer/Carrier. *See* 20 CFR § 18.51; *Warren v. National Steel & Shipbuilding Co.*, 21 BRBS 149, 151-52 (1988). Although coverage under the Act cannot be conferred by stipulation, *Littrell v. Oregon Shipbuilding Co.*, 17 BRBS 84, 88 (1985), I find that such coverage is present here. I have carefully reviewed the foregoing stipulations and find that they are reasonable in light of the evidence in the record. As such, they are hereby accepted as findings of fact and conclusions of law.

#### Summary of the Evidence

Ms. Pomar testified at the hearing before Judge Teitler, CX 3 at 26-69, and at the hearing before me, Tr. at 29-96, 135-221. She was born on July 22, 1949, and was 52 years old at the time of the second hearing. She was born in Cuba, and went to school there until the equivalent of the sixth grade. Then she came to the United States, where she graduated from high school. At the second hearing, she was asked about her ability to speak Spanish. She said she speaks, thinks and sometimes dreams in Spanish, but at the level of a 12-year-old, her age when she left Cuba. All of her formal education since she left Cuba has been in English. She obtained a Bachelor's degree in geology from the University of Miami, a Master's degree in geology from Michigan State University, and a Master's degree in economics from the George Washington University. She became a hydro-geologist and an economist.

After completing her education, Ms. Pomar worked for the federal government for 12-13 years, doing economic research. She was employed by the Department of Agriculture, but also spent time on loan to the World Bank and the U.S. Agency for International Development. A lot of her work had to do with international trade, international economics and international development. She did economic research for the GATT negotiations, and also did some resource economics.

Ms. Pomar became more and more interested in the environment, and next spent four years with CH2M Hill, an engineering firm, working on hazardous waste issues. Examples of that work included studies for a Kentucky nuclear gas diffusion plant and the Santa Clara, California Water District. She then accepted a position as director of environmental technology services for Tropical Research and Development, whose owners she had met during her work for the federal government. An exit medical examination when she left CH2M Hill gave her a clean bill of health. She ran four miles a day, and considered herself athletic. Her work for Tropical Research involved both administration and field work.

In May 1993, Ms. Pomar went to Zambia to supervise a project for Tropical Research and Development. In July 1993, she contracted malaria. Early blood tests failed to result in a diagnosis, so she continued to work until the project was completed in September or October 1993. She went to France, where she collapsed, and a tropical disease clinic finally diagnosed her malaria. She was treated there for about a month, and then returned to the United States. She was still having mild fevers, and felt fatigued and weak. She resigned her position with Tropical Research when she was told she had exhausted all of her vacation and sick time, and they needed to fill the position with someone who could perform the work.

From 1993 on, Ms. Pomar saw many different doctors with many different specialties. Although the Employer/Carrier was ordered to pay for her medical treatment, she testified that she still had unreimbursed expenses going back to 1993. Treatment and expense records which have been introduced into evidence are addressed below. Ms. Pomar said she had frequent mild fevers, headaches, fatigue and muscle aches in 1993 and 1994. Her fevers became less frequent in 1994 or 1995. She began doing consulting work for people who knew of her reputation and called her with projects. She incorporated as PHA Associates, *see* EX U, and began working out of her home. At first she assisted with making proposals and contacts, things she could do from home. Eventually she tried to do some field work, going out with somebody else, but she was unable to do it. On December 2, 1996, one of her clients, Globaltech, Inc., notified her it would no longer need her services as the company needed someone full-time who could do field work. CX 4B. She received a similar letter from another client, Petro Hydro, Inc., dated March 28, 1997. CX 4C. Also during this period, after unsuccessfully seeking to manage her debts with the assistance of a consumer credit counseling agency, Ms. Pomar filed for personal bankruptcy; her debts were discharged on February 18, 1997. CX 4C, 4D.

At the first hearing, held on February 12, 1997, when asked about how she felt, Ms. Pomar said she normally felt achy all over, very, very tired, and frustrated. She described herself before she became ill as someone who overcame obstacles to get her education, who looked for work rather than avoiding it, and who was proud of her accomplishments. She testified that she was doing part-time work because she could not work full-time. She said she was working a maximum of 20 hours per week, for \$22.00 per hour. CX 3.

As noted above, Judge Teitler found that Ms. Pomar was suffering from chronic fatigue syndrome, fibromyalgia, anxiety and depression, all of which were related to the malaria she

contracted while working in Zambia. He found that she reached maximum medical improvement on January 15, 1997, and that her disability became permanent on that date. He found that she could not perform her usual full-time work in the field, on a world-wide basis, but that she could perform part-time employment on a flexible schedule starting in July of 1994. He computed unscheduled permanent partial disability compensation benefits due under Section 8(c)(21) based on a stipulated pre-injury average weekly wage of \$1,345.15 per week, and a wage-earning capacity, based on her actual work, of 20 hours per week at \$22.00 per hour, totaling \$440.00 per week. He found the Employer liable for payment of medical treatment and travel expenses for medical treatment of fibromyalgia, chronic fatigue syndrome, depression and anxiety, and ordered that Ms. Pomar be furnished care and reimbursed for any unpaid medical bills. CX 2 and EX A.

At the second hearing, Ms. Pomar testified that after her first hearing, at the end of 1997 and the beginning of 1998, she did some market development and proposal work for Dames and Moore. She went to Panama for them, but was unable to do what needed to be done. She was weak, fatigued and in pain, and spent a lot of time in her hotel room, until she was hospitalized for tests in April 1998. When she returned from Panama, she was so weak, she fell and hurt her knee. *See* CX 20. She resigned from Dames and Moore. According to a letter from the company, her last day of employment was May 2, 1998. CX 4G.

In February 1999, Ms. Pomar was one of three incorporators of a company called Uno Designs. Corporate records are found in EX S. According to Ms. Pomar's testimony, the company was intended to do life style consulting utilizing Feng Shui, the art of placing objects in a room to create a better environment. Ms. Pomar provided financial assistance, initially investing \$1,000.00 or \$2,000.00, and was to provide answers to any questions that might have to do with hazardous materials used on the premises. Shortly after the company was incorporated, one of the incorporators dropped out. Ms. Pomar was to be a passive partner, and had a few items such as luncheons in the expense records, but she never earned any income from the company. The record contains an affidavit from Maria Gonzalez, the other remaining incorporator, that Ms. Pomar was intended to have the limited role that Ms. Pomar described in her testimony, and that neither she nor Ms. Gonzalez had been paid any salary. CX 4F. EX N contains the 1999 balance sheet, vendor balance summary, profit and loss and general ledger for Uno. They show assets and liabilities of \$5397.00, a loss of \$10,459.40 for the year, and \$3,242.03 in reimbursements to Ms. Pomar, and \$2410.72 to Ms. Gonzalez, but no wages or salaries to either. EX O contains similar information for the year 2000, with a net income of \$4,921.66, and reimbursements but again no salaries to Ms. Gonzalez and Ms. Pomar. Ms. Pomar said that at the time of the hearing, Uno was still in existence, but Ms. Gonzalez was working full-time at another job, and wanted to dissolve Uno. On cross examination, Ms. Pomar testified that the reimbursements she received represented equipment she sold to the company, some meals and other business expenses.

In response to inquiries from counsel for the Employer/Carrier at her deposition in 1999, Ms. Pomar gave her notes to someone to compile a list of places she inquired about work, including research assignments. CX 7; Tr. at 144-146, 188. Potential employers she contacted included the United Nations Development Programme, Sustainable Energy and Environment

Division; Chemonics; AT&T; Inter-American Development Bank; U.S. Agency for International Development, Bureau for Global Programs; and the World Bank. Ms. Pomar testified that she was looking to see whether she could help review portions of reports or projects. She said, however,

Once you become inactive in a field like this, they just don't call you back. Besides that, at that point in time, I just couldn't review anything. Because if they would have sent me a report or something to review, and they had a fast deadline on it, and I didn't happen to feel good for three days, and I was laying down, I couldn't have done it.

Tr. at 147. She went on to say that she would be unable to review the reports now, because she cannot focus. Her medications make her nauseated, ill and dizzy. The work is technical, and requires accurate memory, and she has to go over things repeatedly.

Ms. Pomar's tax returns for the years 1997, 1998, 1999 and 2000 are in the record at CX 5 and EX J, K, L and M. Her 1997 return showed wages and salaries of \$23,892.00 from Dames & Moore, Inc., non-employee compensation of \$3300.00 from Globaltech, \$3750.00 in unemployment compensation, some taxable interest, \$1999.00 in losses from PHA Associates, and \$15,387.00 in carryover losses, from an unspecified source. Her 1998 return showed \$22,364.00 in wages and salaries from Dames & Moore, Inc., taxable interest, losses of \$7,888.00 from PHA Associates, Inc., and a net operating loss carryover of \$13,687.00 from an unspecified source. Her Amended 1999 return shows no wages and salaries, income from interest, dividends, capital gains and an IRA distribution, and losses of \$7,128.00 from PHA Associates, Inc., and Uno Designs, Inc. The 2000 return again shows no wages and salaries, but income from interest, dividends and capital gains, and losses and carryover losses from PHA and Uno. Miscellaneous business records from PHA for 1998, 1999 and 2000 are found in EX O, P, Q and V. Eventually, in September 2000, PHA Associates was dissolved. CX 6 and EX T.

Ms. Pomar testified she is being treated for fibromyalgia by Dr. Pachon, a rheumatologist, who has prescribed various medications, occasional muscle injections and physical therapy. The medications have side effects, including stomach aches, nausea, photosensitivity and dizziness. Her physical therapist is Cecil Ybanez, who performs traditional therapy, and helps her do Pilates exercises. She joined a health club based on Dr. Pachon's recommendation that she try to exercise. *See* CX 4E.

She also sees Dr. Lichtblau, who first evaluated her in 1999. She has requested that he be authorized by the Carrier.

Ms. Pomar sees a psychologist, Dr. Miller, and a psychiatrist, Dr. Villalobos, on a regular basis. She takes medication for anxiety and depression. Asked to describe her psychological condition, she said it is very difficult to explain. She feels frustrated, because she identified with her work. She was the only woman that graduated in geology in her class, and her environmental work was a new field that did not exist when she came out of school. When she tries to read, she



cannot, because either her eyes hurt, or her head hurts, or she is dizzy, and her body aches. She has memory lapses. What she can do on a typical day varies by how she feels and how well she has slept. Her muscles cramp, and she feels fatigue all the time. Normally she does not drive more than half an hour.

Ms. Pomar said she was surprised by the recommendation that she do translation work. She said she does not have the level of Spanish that it takes, and she cannot focus or keep attention on things. She said she called some of the potential employers identified by Mr. Katzen, the vocational consultant retained by the Employer/Carrier. She said when she explained her background, she was told that her vocabulary was limited and that they would want to hire translators with experience and college level Spanish. The people she spoke to offered helpful suggestions, such as recommending that she brush up on Spanish by reading and taking courses, and referring her to a web site of an association that certifies people in translating. She said has never taken any formal Spanish courses. Her vocabulary is limited to everyday conversation with family or people on the street. She could not do technical translations. For that she would need to build a vocabulary, for which she would need stamina. She also lacks the memory and concentration to do translation.

On cross examination, Ms. Pomar was asked about the medications she takes. She was also asked to reiterate the reasons she thinks she cannot work. She replied in essence that she cannot work because of the combination of her mental and physical limitations. When asked whether she was willing to work at any job other than the high-profile, high-level job she once had, she answered, "It's not a matter of whether I am willing. I cannot." Tr. at 174. She said she started PHA and Uno, and called the employers identified by Mr. Katzen, because she was willing to explore the possibility of working. She denied that she does not want to work, and said that she would do other kinds of work if she could physically and mentally do it. Counsel for the Employer/Carrier unsuccessfully attempted to impeach this testimony with testimony from her deposition that she did not want to go down in income or status, suggesting that she would not accept a job at a lower level than she had before. *See* Tr. at 185-186. I found Ms. Pomar's hearing testimony credible and do not credit the interpretation offered by the Employer/Carrier.

Asked about her use of and fluency with Spanish, she said she speaks conversationally with her uncle and some friends of her mother. She can read a Spanish newspaper, but might not know all the words. She had never considered being a translator or an interpreter, because she never thought her Spanish was any good. She is bilingual in the sense that she can speak it automatically, and partly dream in Spanish. When asked whether she had ever been required to translate technical matters, she said no. In support of its argument that Ms. Pomar is able to translate technical matters, the Employer/Carrier pointed to her testimony at the previous hearing that she had been doing technical translations for Petro Hydro, and introduced a letter from Petro Hydro dated February 11, 1997, addressed "To Whom It May Concern," describing Ms. Pomar's consulting work to include "writing documentation for the firm as well as translating some technical documents." EX Y. The letter was written in response to Ms. Pomar's request for documentation of her work and earnings for the previous hearing. She explained that the work

she did was with a team of people preparing a statement of qualifications in English and Spanish, and that she would not have done the technical translation. I found Ms. Pomar's testimony about her Spanish skills, the context in which the letter was written, and the extent of her participation in technical translation, *see* Tr. at 195-202, to be credible. I do not find her previous testimony or the letter to be persuasive evidence that Ms. Pomar has engaged in any substantial technical translation work, in the sense that would be required for her to perform technical translation as her primary job. Nor do I agree, as argued by the Employer/Carrier, that Ms. Pomar was "disingenuous" about her facility with Spanish to avoid an adverse decision on her claim for total disability.

Ms. Pomar testified that in October 2000 she rented her house to a roommate who does the cleaning and cooking. Before that she had a person who came in and helped her with cleaning. Ms. Pomar said she spends much of her time at her uncle's house around the corner, or at her brother's house in Gainesville, because she is unable to do things for herself.

### Medical Evidence

The file contains reports from Dr. David Dickensheets dated December 22, 1993, January 6, 1994 and November 21, 1994. CX 8. Dr. Dickensheets was the physician Ms. Pomar selected to be her primary care physician when she left the employ of Tropical Research and Development. CX 4A. He reported that she had a fatigue illness, associated fibromyalgia, status post a malaria infection in July 1993. He believed her medical condition had stabilized and that she was at maximum medical improvement as of October 24, 1994. He stated that because of her illness, she was unable to work or concentrate for prolonged periods of time, and should avoid stressful situations, prolonged physical activities, and excessive heat. There are no medical records in evidence for 1995 or 1996.

Ms. Pomar was evaluated by a psychiatrist, Dr. Alejandro Villalobos, on January 15, 1997. CX 16. Dr. Villalobos took her history and conducted a mental examination. He diagnosed adjustment reaction with depression and anxiety, and assigned a Global Assessment of Functioning (GAF) of 50 with serious symptoms. In his opinion, Ms. Pomar was at psychiatric maximal medical improvement as of the date of the examination, and assessed a 55% impairment. He said she was only able to do some limited work, and in order to prevent deterioration, recommended psychiatric treatment with antidepressants, anxiolytics and psychotherapy. Her prognosis was guarded.

On March 27, 1997, Ms. Pomar returned to Dr. Villalobos with an increase in depression. She was taking Prozac and Elavil. Dr. Villalobos increased the dose of Elavil and recommended weekly therapy, stating that she seemed to be under more stress, and treatment was urgent. CX 16.

When Dr. Villalobos saw Ms Pomar on January 10, 1998, he observed that from an emotional standpoint she seemed more relaxed and less anxious. She was still taking Elavil, but

did not want to keep taking Prozac, preferring St. John's wort. Dr. Villalobos referred her to a psychologist, for continuing psychotherapy. CX 16. There are no records of any treatment by a psychologist, however, until over a year later, in May 1999, when she began seeing Dr. Lawrence Miller.

Dr. Jaime Pachon, a rheumatologist, began treating Ms. Pomar in January 1998. His reports appear in CX 9. At her first visit, she complained of diffuse body aches, fatigue and lack of energy. She reported having to stop antidepressants prescribed by another physician because they caused excessive drowsiness and cloudy sensorium. Dr. Pachon ruled out endocrine or inflammatory myopathies with laboratory tests, diagnosed fibromyalgia, and prescribed low doses of Elavil (Amitriptyline) combined with NSAID's.

The record contains a record of an emergency room visit in Panama on April 5, 1998, which has been partially translated from Spanish to English. CX 19. The diagnosis was illegible; her condition at admission, however, was marked as "Serious."

An x-ray report of Ms. Pomar's left knee from the emergency room at the Boca Raton Community Hospital dated May 8, 1998, noted joint effusion but no fracture.

Ms. Pomar returned to Dr. Pachon on September 14, 1998, reporting progressive fatigue in the last week to 10 days. Dr. Pachon diagnosed a fibromyalgia flare, increased her dose of Amitriptyline, and changed her from Voltaren to Oruvail due to excessive daytime sleepiness. In a handwritten note from 1998, for which the rest of the date is illegible, Dr. Pachon gave a similar report, and also recommended exercise. CX 9.

When Dr. Pachon saw Ms. Pomar on March 29, 1999, she reported experiencing flares three out of seven days of the week. She reported engaging in Pilates exercises. Dr. Pachon continued her medications and encouraged her to engage in a structured and regular exercise routine. A handwritten note dated April 28, 1999, indicates that the Claimant called to report a pain flare. Dr. Pachon recommended that she take 400 mg. of Advil along with her Amitriptyline. CX 9.

Ms. Pomar began seeing Dr. Lawrence Miller, a psychologist, for psychotherapy. The record contains his handwritten therapy notes from May 24, 1999, to June 14, 2001. Billing records and notes show that Ms. Pomar saw Dr. Miller almost every month, two to four times a month between May 1999 and December 2000. In November 2000, Dr. Miller notified counsel that he was owed over \$5000 for treatments going back to July 1999. The number of visits fell off in early 2001. EX 17.

On June 25, 1999, Dr. Pachon suggested Ms. Pomar would benefit from massage therapy along with her exercise routine. CX 9.

When Dr. Pachon saw Ms. Pomar on August 6, 1999, she reported excessive fatigue and

lack of energy, but her pain had improved. Dr. Pachon attributed fatigue to the underlying disease as well as the medication, which he recommended taking earlier in the evening. Dr. Pachon wrote a letter dated August 9, 1999, describing her ongoing treatment, and stating that her fibromyalgia had not improved significantly. Dr. Pachon stated that her condition required advanced work restrictions, in that she should not work more than an eight-hour day, lift, carry, or push more than ten pounds, and/or stand or sit for more than 30 minutes. He expressed the opinion that she had reached maximum medical improvement, with a 5% permanent whole body impairment and work limitations. CX 9.

Correspondence from Cecil Ybanez documented that Ms. Pomar had participated in Pilates sessions on referral from Dr. Pachon from January to September 1999, when she could no longer participate due to acute muscle pain and limited range of motion. After a period of bed rest and massage therapy, she returned to him for physical therapy until May 2000. CX 11.

On November 16, 1999, Ms. Pomar reported to Dr. Pachon that she had worsening pains which had caused her to discontinue her exercise routine. Dr. Pachon prescribed additional medication, local injections and encouraged her to exercise. CX 9.

She returned to Dr. Pachon on December 14, 1999, with no improvement. He continued her Elavil, changed her NSAID yet again, and encouraged her to exercise to tolerability. He thought walking should suffice. CX 9.

On April 7, 2000, she reported to Dr. Pachon that she had exquisite back pain and that she had been seen by a neurologist, who had no findings and felt it was a fibromyalgia exacerbation. CX 9.

On June 9, 2000, Ms. Pomar told Dr. Pachon that she felt her condition was progressively worsening. Dr. Pachon assessed fibromyalgia with persistent exacerbation triggered by minimal stressful environment or physical activities. He continued Vioxx, Amitriptyline and Neurontin. He suggested evaluation by an occupational medicine doctor to assist with her degree of disability. By letters dated June 14, 2000, he reiterated his prior work limitations and assessment of impairment. By letter dated June 30, 2000, he stated that she continued to experience a great deal of fatigue, lack of energy, and diffuse pain, and that she should not work in any capacity. CX 9.

On June 15, 2000, Dr. Miller notified Ms. Pomar's counsel that she was displaying signs and symptoms of cognitive impairment consistent with a diagnosis of organic mental disorder resulting from her work-related injury. He recommended a neuropsychological evaluation to determine the nature and extent of cognitive and behavioral impairment. CX 17.

On August 7, 2000, Dr. Miller wrote to counsel for the Claimant stating that she remained totally and permanently disabled from work due to diagnoses of major depressive disorder and organic cognitive impairment. CX 17.

Dr. Stuart Krost, who practices in physical medicine and rehabilitation and pain management, conducted a medical evaluation of Ms. Pomar on behalf of the Employer/Carrier on August 29, 2000. He prepared reports, EX B, C, and was deposed, EX W. When Dr. Krost saw Ms. Pomar in August 2000, he reviewed the history of her illness, and took medical, family and social histories. She complained of severe fatigue, migraine headaches, muscle spasm, muscle pain, inability to sleep, confusion, tiredness, light sensitivity and numbness and tingling of all extremities. Dr. Krost conducted a physical examination. He observed tender points about the cervical and lumbosacral spine, and all extremities. He said her presentation was consistent with her prior diagnoses of chronic fatigue syndrome/fibromyalgia. His recommendations for treatment included medication, intermittent physical therapy, trigger point injections and continuing psychological and psychiatric care. He said her chances for returning to any type of gainful employment on an uninterrupted basis were "grim." EX C.

Dr. Craig Lichtblau, who is board certified in physical medicine and rehabilitation, conducted a medical evaluation of Ms. Pomar on behalf of the Claimant on August 30, 2000. CX 14. He reviewed the history of her illness, and took medical, family and social histories. She complained of joint pain and stiffness and achiness in all of her muscles, problems sleeping, headaches, and photophobia. She said she was only able to do one activity in a day, such as going to a doctor's appointment, and then would be unable to do anything for two to three days. She complained of dizziness and nausea, increasing depression and anxiety, and confusion and inability to concentrate, and said her symptoms had become worse over the last two years. Dr. Lichtblau conducted a physical examination, and reviewed her medical records. His diagnostic impression was status post malarial infection, secondary to work related activities as a hydro-geologist in July 1993; chronic fibromyalgia, secondary to the malaria; organic mental disorder as diagnosed by Dr. Miller, secondary to the malaria; and clinical anxiety disorder and major depressive disorder as diagnosed by Dr. Villalobos, also secondary to the malaria. Dr. Lichtblau stated that it was his opinion that she was suffering from a chronic fibromyalgia-like syndrome, major depressive disorder and organic cognitive impairment secondary to the malarial infection. There was also a possibility that clinical manifestation may be long term sequelae stemming from her pharmacologic treatment. It was his opinion that she was outside the window of therapeutic benefit for her chronic pain and discomfort. For acute exacerbations of pain, she might be a candidate for a short-term outpatient physical medicine program monitored and supervised by a physician. He recommended a functional capacity assessment, and said she should continue Neurontin, Vioxx, Amitriptyline and Ibuprofen as prescribed by Dr. Pachon.

Dr. Lichtblau also conducted a functional capacity assessment. After observing her performance on various tests, Dr. Lichtblau found her to be cooperative and said she followed instructions. She required frequent rest periods and positional changes. There was a close correlation between her complaints of pain and her functional ability. It was his belief that she did not have the functional capacity to work 4 hours per day. She would have to take breaks to change positions at will, and walking should be limited to less than 100yards. Her estimated physical demand characteristics were limited to sedentary, lifting 10 pounds or less infrequently. Dr. Lichtblau concluded:

It should be understood that this patient is suffering from acute, intermittent exacerbations of pain and it is my medical opinion, as a board certified physiatrist, that this patient will not be able to participate in gainful employment in the competitive open labor market or in a sheltered environment with a benevolent employer. It must be understood that this patient is going to suffer from good days, bad days and missed days of work.

CX 14 at 13. Dr. Lichtblau gave an AMA impairment rating of 55% of the whole person due to cognitive and psychological impairment, 5% of the whole person due to fibromyalgia, resulting in a 57% permanent partial impairment of the whole person. CX 14 at 14. He also prepared a Florida impairment rating, continuation of care cost estimates, and a summary report.

On September 29, 2000, Ms. Pomar again reported no improvement of her condition to Dr. Pachon. CX 9.

Ms. Pomar underwent neuropsychological examination by Dr. Mark Todd, a neuropsychologist, on October 6 and 9, 2000. Dr. Todd took medical and social histories. The Claimant described the history of her illness, and her daily activities. Dr. Todd said Ms. Pomar was pleasant and cooperative, but significantly slow and easily confused. Significant psychomotor and motor function slowing was noted. Her affect was constricted, and her mood depressed. Tests of malingering raised concerns with regard to whether she put forth her optimal effort, but she did not appear to be frankly malingering. In his summary, Dr. Todd said that it was probably the case that her depression was a complicating factor inhibiting her ability to function at an optimal level. The results of the MMPI-2 suggested an individual experiencing significant emotional turmoil, characterized by mixed depression and anxiety, feelings of social alienation and withdrawal, as well as low energy levels and inertia. The WAIS-III indicated low average verbal and nonverbal performance, but attention and concentration were borderline to impaired, and psychomotor speed was clearly impaired. Academic skills measured by the WRAT-R were low average to impaired. Verbal language fluency was mildly impaired. Verbal and nonverbal executive functioning was severely impaired, as were visual perceptual abilities. Learning and memory were also impaired. None of her scores were consistent with her premorbid estimate of functioning. Her memory functioning and IQ were worse, and her attention and concentration skills were poor. Dr. Todd's overall impression was that Ms. Pomar's difficulties resulted from significant depression rather than organic brain syndrome. Dr. Todd recommended continued psychopharmacologic and psychotherapeutic support. He also said,

At some point, it would also be beneficial for her own mental health and perhaps her physical condition to attempt to return to work. This should be done on a part-time basis with frequent breaks given to enhance her likelihood of success. Unfortunately, because she has been out of work for at least three years, her prognosis for return to work is poor.

CX 18 at 12.

Ms. Pomar saw Dr. Villalobos for re-evaluation and follow-up on October 18, 2000. CX

16. Dr. Villalobos said her psychological condition was stable but at a low level of functioning. She was depressed and anxious. She was seeing Dr. Miller once a week. Dr. Villalobos recommended that she continue seeing Dr. Miller, and that she be referred to a psychiatrist in Boca Raton, near her home. In his opinion, Ms. Pomar met clinical criteria for total and permanent physical and probably psychological disability. He saw no improvement since he had last seen her in 1998, and assessed her psychological impairment as moderately severe in all areas. He said she was in need of palliative treatment indefinitely.

Dr. Villalobos prepared a psychiatric reevaluation dated April 25, 2001. CX 16. Dr. Villalobos described her symptoms as depression and anxiety associated with difficulty to concentrate, impairment of recent memory, sleeping disorder, anhedonia, loss of interest in people and things that interested her before, disorientation, psychomotor retardation, generalized somatic pain, easy crying, headaches and death fantasies. His diagnostic impression was dysthymic disorder, and again he assigned a GAF of 50. He reiterated his 55% impairment rating, and said she was unable to work. He recommended psychiatric treatment indefinitely to prevent more deterioration, and said her prognosis was poor.

Dr. Villalobos saw Ms. Pomar again on May 30, 2001. CX 16. He said she continued with depression, anxiety, difficulty concentrating and impairment of her recent memory. He observed that she had developed impairment of her distant memory and disorientation, and her somatic pain seemed to be worsening. She had suicidal ideation. Dr. Villalobos stated that Ms. Pomar reached MMI for a second time on April 25, 2001, when he found her condition worsened from previous examinations, and assessed her impairment at 55% to 60% of the body as a whole. He said that future lifetime care will be necessary in the form of office visits and medication.

On June 7, 2001, Dr. Krost issued a supplemental report revising his opinion about Ms. Pomar's ability to work in response to a request from counsel for the Employer/Carrier "including details of an investigation of a corporate entity as well as a deposition of Maria Elena Pomar, 6/9/99." Dr. Krost stated that Ms. Pomar had reported to him that she had been out of work since 1993, and reviewed the evidence that she had worked after that time. He concluded that she could work at sedentary to light work. EX B.

Ms. Pomar returned to Dr. Miller for follow-up on June 14, 2001. CX 17. Dr. Miller reported that she continued to report pain and physical discomfort. He said she appeared depressed and distraught, and reported symptoms of anxiety, depressed mood, impaired concentration and memory, and disturbance of sleep. She had been living with her brother's family in Gainesville, where the family environment provided her with comfort and support. Dr. Miller diagnosed organic cognitive impairment secondary to malaria, and major depressive disorder, recurrent, severe. He said she was disabled from gainful employment on a psychological basis.

On June 20, 2001, Ms. Pomar returned to Dr. Lichtblau for a follow-up office visit for re-evaluation because Dr. Krost had changed his opinion. She continued to complain of the same

problems, and told Dr. Lichtblau she thought her condition was worsening. She believed Dr. Krost's changed opinion was based on an erroneous report that she was doing research in Indonesia, a mis-transcription of Dr. Miller's notes that she was doing research on malaria. Dr. Lichtblau found no change from his previous examination. She appeared very uncomfortable, and, as on her previous visit, when observed covertly she exhibited the same slow gait and deliberate motions as she did during the examination. Dr. Lichtblau's diagnostic impressions were the same as in his previous report. He recommended considering chronic pain management with the Duragesic Patch and follow-up as needed. As to work status, he stated, "It is my opinion, as a board certified physiatrist, that this patient is not able to work 4 hours per day on an uninterrupted basis." CX 15.

Dr. Lichtblau was deposed on October 2, 2001. EX BB. He was board certified in physical medicine and rehabilitation in 1991. He is a solo practitioner with an inpatient and outpatient practice. Disability evaluations constitute less than 10% of his practice. He confirmed that he conducted an examination of Ms. Pomar on August 30, 2000, which took about two hours. He is generally not aware of which statutes are implicated in any particular examination, other than noting whether he should use the AMA or Florida rating guide. In order to perform an evaluation, he takes a history, performs a physical examination, and has the patient perform 38 tests of physical movements such as bending, lifting, pushing and pulling. He also reviews the medical records. He then writes a clinical opinion, and makes a plan for future medical care. In his view, Ms. Pomar has a legitimate combination of physical and psychiatric problems. He did not believe she was magnifying her symptoms. In her case, he believed the greater part of her problem was psychiatric. As part of his training as a physiatrist, he has to recognize depression, anxiety and what is associated with chronic pain and disability. He prescribes antidepressants, and calls in psychiatric referrals. Based on his knowledge, training and experience, including his chronic pain practice, he did not believe that Ms. Pomar's limitations on physical examination were due to intentional withholding of participation. Her performance was consistent with her history. His statement that Ms. Pomar could not work four hours per day on an uninterrupted basis meant permanent and total disability under Florida law. He said she could not work out of an office without a benevolent employer. In response to questions from counsel for the Employer/Carrier, he said she could work out of her house on her own schedule, when she can work. The physical restrictions he set forth would apply.

Dr. Lichtblau testified that he first saw Ms. Pomar for an evaluation, but he then saw her twice for treatment. He had prescribed a Duragesic patch, which is a powerful narcotic. He had last seen her on July 17, 2001, when he also prescribed Xanax. According to the report of the visit, which was made an exhibit to the deposition, Ms. Pomar had begun suffering from shortness of breath and heart palpitations for about two weeks, which Dr. Lichtblau believed were panic attacks or anxiety disorder. Dr. Lichtblau testified that her condition had deteriorated since the August 2000 evaluation. Although at first he said he still felt she could perform work in her house at her own schedule for four hours a day with the limitations he had described, it became apparent that he did not believe that she could maintain such a schedule due to the combination of her problems, including physical and psychiatric components, medication and chronic pain. He



said the fact that she was independent in her activities of daily living was not inconsistent with his opinion that she could not work.

Dr. Villalobos was also deposed on October 2, 2001. EX CC. He went to medical school in Argentina, but completed his psychiatric education in the United States. He was board certified in 1984 and has been practicing psychiatry since 1975. About 20-30% of his practice involves providing evaluations in connection with workers' compensation claims. He confirmed that he had seen Ms. Pomar on seven occasions between January 1997 and July 2001, and wrote two functional capacity evaluations for her, described below. He did not consider himself her treating physician, as he had recommended she be treated by a physician closer to her home, but acknowledged that he had treated and evaluated her, and monitored her progress. As a psychiatric consultant at a pain clinic, he has treated other patients with fibromyalgia. He said from a psychiatric standpoint, patients seldom recover from fibromyalgia. He explained how he examined Ms. Pomar. He said his initial recommendation of one year of therapy is fairly typical for a depressed patient, after which the treating physicians would be able to give more opinions. He said his ratings on the functional capacity evaluations are subjective, based on his whole picture of the patient and his evaluation to the best of his ability, based on what the patient tells him and how she presents. He changed Ms. Pomar's diagnosis from adjustment reaction to dysthymic disorder, because all of her symptoms were worse. He believed her unable to work over the entire time he saw her, and that unsuccessful attempts to work confirmed his view that she could not work. Although he could have been more certain if he had been seeing her on a more regular basis, his opinion was that she would not be able to hold work because "She was too distressed, too depressed, too anxious to be able to do it." EX CC at 42. He said his belief that a job as a translator would be unrealistic for her was based in part upon his view, from speaking to her in Spanish, that her Spanish was at too low a level. He conceded that he might be technically overstepping the bounds of his expertise in giving that opinion. Nonetheless, he expressed disbelief that she could be a translator, given her difficulties with memory, concentration, and attention, and speaking poor Spanish. He said they spoke both Spanish and English all the time, and that Ms. Pomar is more fluent in English. He said she is too disorganized, depressed and anxious to work at home on her own schedule. He said Mr. Katzen never contacted him about Ms. Pomar. Dr. Villalobos confirmed that he had never been paid and was owed about \$1600 back to 1997, and that Ms. Pomar needed continuing psychiatric care in Boca Raton near her home. He said that he did not want to treat her because she cannot travel; the last two times he saw her, someone had to bring her, and she was almost in a panic.

Dr. Miller was also deposed on October 2, 2001. EX DD. He has a Ph.D. in psychology, and practices clinical psychology with specializations in neuropsychology, traumatology, forensic psychology and business psychology. He began practice under supervision in 1978, and became independently licensed to practice in 1988. His practice has included fibromyalgia patients, to whom he has offered various approaches, including cognitive behavioral pain control strategies, and psychotherapy for adjustment to disability and for psychological aspects of chronic pain. He also provides evaluations and assessments in litigation, which constitute a quarter to a third of his practice. He began treating Ms. Pomar on referral from Dr. Villalobos on May 24, 1999. Based

on her initial interview, he concluded that Ms. Pomar was suffering from chronic pain and depression, and cognitive symptoms of impaired memory and concentration that appeared to be related to the incident of 1993. He did not do any objective testing when he began treating her. He referred Ms. Pomar to Dr. Todd for testing in October 2000 to avoid confusing the role of clinician with the more objective role of evaluator. He said Dr. Todd concluded that she showed some evidence of cognitive impairment related somewhat to organic effects of malaria, but primarily to the effects of depression on attention, memory and concentration. Dr. Todd's evaluation did not affect Dr. Miller's treatment of Ms. Pomar in any material way, but clarified the cognitive symptoms she complained of. During his treatment of Ms. Pomar, he provided weekly psychotherapy consisting of supportive expressive psychotherapy, exploratory psychotherapy, practical recommendations for pain management and dealing with depression, and generally encouraging her to be as active and independent as possible within the limits of her disability. Physically, her limits were in terms of chronic pain and fatigue; psychologically, anxiety and depression; and cognitively, organization and memory. He said Ms. Pomar was very compliant with treatment. He said that chronic pain and clinical depression interact, with each affecting the other, and one tends to exacerbate the other. Fibromyalgia patients are rarely cured, but they may get better or worse, or their symptoms may wax and wane. In Ms. Pomar's case, her symptoms waxed and waned.

Asked what he meant when he concluded that Ms. Pomar was totally and permanently disabled, he said he meant that she would not be able to maintain a productive schedule of employment at any level that would demand a regular schedule. A combination of difficulty dealing with people, problems with fatigue and chronic pain, and general levels of depression in terms of concentrating and focusing combined to prevent her from working. He agreed that she was not significantly impaired in any activity of daily living, but he said that is not so much relevant to assessment of her ability to work as it is to whether she suffered from dementia. Basic living skills would be a prerequisite for work but would not guarantee the ability to do the job. Asked about the possibility of having employment working at home, alone, under her own schedule, Dr. Miller said even piece-work would be questionable because of the restrictions on doing self-paced tasks. Ms. Pomar had not worked at any time during his treatment, and it never became clear to him that she was capable of sustained work, so his first goal was to get her as functional as possible in terms of her daily life. Her inability to work at the level she used to is a major part of her depression. He said if she could work at any job in a productive way that would have a positive impact on her emotional status, he would support her doing that. Through the time he had been treating her, it was never apparent to him that she could work successfully compared to a normal employee at any level.

Dr. Miller's reports and functional capacity assessment, all of which were introduced at hearing, were also attached as exhibits to his deposition. He explained the basis for some of his ratings on the functional capacity evaluation, and said he thought his ratings establish that Ms. Pomar is disabled from work as defined by what a normal worker would do. He said she would need more time than the average translator to complete a piece of work. He gave analogies suggesting that the quality of her work would also be diminished.

Finally, Dr. Krost was also deposed on October 2, 2001. EX W. He is board certified in physical medicine and rehabilitation, and in pain management. About 80% of his practice is related to workers' compensation injuries. He reiterated his findings from his August 2000 examination of Ms. Pomar. He said he had reviewed records from Dr. Villalobos, Dr. Miller, and Dr. Pachon, and Judge Teitler's D&O. He said that Ms. Pomar "absolutely" told him she had been out of work since 1993. He said his initial impression that Ms. Pomar was unable to return to any gainful employment because of her history of chronic pain and unemployment since 1993. He said the length of unemployment was relevant, because

The longer you are unemployed, the more unlikely it is to return to any type of gainful employment, and considering her ongoing symptoms and obvious reported physical disabilities and psychological sequelae, . . . I didn't think it was realistic at this time that she was going to return to any type of competitive gainful employment.

EX W at 13-14. He revised his opinion after he was asked to review documentation forwarded to him by counsel for the Employer/Carrier, including Ms. Pomar's deposition, a "Confidential Activity Check Investigation" and articles of incorporation. He changed his opinion because "she apparently was in gainful employment after 1993. And one of the comments she made was that she wasn't returning to any type of other employment because from a financial standpoint she couldn't make the money that she was previously making." EX W at 18. He concluded that she was not motivated to work. He also felt "there would be no contraindications to working sedentary light-duty work on a full-time basis." EX W at 19. He testified that he thought work would benefit her physically and emotionally. He said that a job involving translating documents at home on her own schedule, as described by Mr. Katzen, would be within her capabilities assuming sufficient Spanish-English fluency. He could not comment on her ability to concentrate.

On cross examination, Dr. Krost agreed that if he was given misinformation, his impressions might change. He reiterated that Ms. Pomar told him she had been out of work since 1993. He also reiterated that at the time of his examination of Ms. Pomar, he had reviewed Judge Teitler's decision. However, he did not recall the portion of the decision which indicated that she had worked after 1993. Dr. Krost confirmed that his opinion that Ms. Pomar was employable was from a physical standpoint, and not from a psychological or psychiatric standpoint.

Dr. Krost's curriculum vitae, correspondence from counsel for the Employer/Carrier in July and August 2000, and Dr. Krost's patient history notes were attached to the deposition. Correspondence seeking the supplemental report in 2001 was not included. The selection of documents provided for Dr. Krost's review in 2001 is suggestive that the request was not neutrally framed. Moreover, counsel for the Claimant implied that the request included misinformation, *see* EX W at 24 and EX DD at 54, but there is insufficient evidence for me to make such a finding. Based on Dr. Krost's testimony, however, I conclude that his revised opinion was based at least in part on his conclusion that Ms. Pomar had deliberately mislead him about her post-injury work. Ms. Pomar testified that she told Dr. Krost only that she did not go back to work with Tropical Research and Development, not that she had been out of work

entirely. Tr. at 155. The record as a whole does not support a conclusion that Ms. Pomar has ever hidden her attempts to work, successful or unsuccessful. I conclude that Dr. Krost's belief that Ms. Pomar told him she had been out of work since 1993 resulted from a misunderstanding, and not from any deliberate attempt to mislead on her part. In any event, all of the doctors of the opinion that she cannot work have agreed that it is her mental, rather than her physical limitations, which prevent her from working. Dr. Krost conceded that he was speaking only to her physical ability to work.

### Vocational Evidence

In support of its position that Ms. Pomar can work as a translator, the Employer/Carrier offered the testimony and reports of Roy Katzen. Tr. at 221-268; EX D, E. Mr. Katzen has a Master's degree in psychology. He is a certified rehabilitation counselor, and is certified by the Department of Labor to provide services to injured workers. He has worked in vocational assessment and rehabilitation since 1979. His curriculum vitae appears at EX F. Mr. Katzen was asked to assess Ms. Pomar's residual earning capacity. He reviewed medical records from Dr. Villalobos, Dr. Pachon, Dr. Miller, current treating physicians, as well as Dr. Dickensheets, who previously treated her, and Drs. Dodson and Choa, who evaluated her in Paris. He also reviewed consultant reports from Dr. Bush, Dr. Lichtblau, Dr. Todd and Dr. Krost. He had also reviewed more recent reports in preparation for his testimony. Before speaking to Ms. Pomar, he also reviewed her deposition and Judge Teitler's D&O. On June 21, 2001, he interviewed Ms. Pomar by telephone to form a profile based on her education, work history and current restrictions. The interview lasted about an hour. He also performed a computerized transferable skills analysis. Based on her advanced education and work history, combined with a low level of physical functioning and decreased level of intellectual functioning resulting from her injury, he concluded that she could return to work on a part-time basis where some flexibility in work activity would be possible. As she was bilingual in English/Spanish, it was his opinion that Ms. Pomar could reenter the workforce by working as a translator on a half-time basis.

Mr. Katzen testified that he is familiar with the provisions of the Longshore Act that are relevant to a vocational counselor's assessment and performance of a labor market survey. He agreed that there is a distinction between a medical finding of permanent total disability and a vocational finding of suitable alternative employment with consequent wage earning capacity. He said that what he looks for in a medical, psychological or psychiatric report is function, more than whether a physician says a person is non-competitive in the work place. He relied on Dr. Lichtblau's functional capacity assessment that Ms. Pomar was able to function in a sedentary range of work, but rejected Dr. Lichtblau's conclusion that she was not able to work as a translator, as a vocational rather than a medical opinion. Mr. Katzen pointed particularly to the language in Dr. Lichtblau's report that Ms. Pomar could not work four hours on an *uninterrupted* basis. Mr. Katzen said by recommending work as a translator, he was addressing ability to work in an *interrupted* fashion, i.e., at her home on a flexible schedule. He did not interpret Dr. Villalobos' reports to show that Ms. Pomar's cognitive or intellectual abilities are so impeded that she could not perform the work. Mr. Katzen also relied on the reports from Dr. Krost, who

assessed fewer physical limitations than Dr. Lichtblau, and Dr. Todd, the neuropsychologist. Mr. Katzen pointed out that while Dr. Todd did not find any frank evidence of malingering, he did find some inconsistencies of concern, and that depression might be a complicating factor. Mr. Katzen also emphasized that Dr. Todd suggested that some part-time work with frequent breaks would possibly be beneficial to Ms. Pomar.

Putting all the medical information together, Mr. Katzen concluded that he should look at sedentary jobs, starting on a part-time basis but with the opportunity to expand full-time. He focused on translator/interpreter because Ms. Pomar told him she was “totally” bilingual, *see* Tr. at 239-245, EX Z and AA, and there were other indicators in her file indicating fluency in Spanish, including the letter from Petro Hydro, EX Y. He obtained information about translators and interpreters from the American Translators Association. *See* EX G. He then researched the labor market for employers who hire translators, and contacted nine of them. Seven provided work at home, and one or two had people on site or at home. He also discussed timeliness, and concluded that Ms. Pomar could turn down specific assignments with too short deadlines, or negotiate a longer time to produce work. He provided them with information about Ms. Pomar. He emphasized her technical knowledge, telling them that her Spanish level was equivalent to her English. On cross examination, he said that if Ms. Pomar’s testimony about the level of her Spanish skills was truthful, then he would question her ability to work as a translator.

The Claimant offered several exhibits in rebuttal to Mr. Katzen’s report. CX 25 is a letter from Dr. Lichtblau in which he states that Mr. Katzen did not consult with him before or after the report was written. It was his opinion that Ms. Pomar was not capable of any type of gainful employment due to her chronic pain, because of which she would have good days, bad days, and days when she would be incapacitated. He believed that Mr. Katzen had failed to fully interpret and understand the complexities of Ms. Pomar’s physical and psychological components to her impairment. It was his opinion that Ms. Pomar “is non-employable now and into the future.”

Dr. Villalobos provided assessments of Ms. Pomar’s residual mental functional capacity dated January 15, 1997, CX 26, and July 9, 2001, CX 28. Rating terms were defined as none, for no impairment; mild, for suspected impairment of slight importance which does not affect ability to function; moderate, for an impairment which affects but does not preclude ability to function; moderately severe, for an impairment which seriously affects ability to function; and severe, for extreme impairment of ability to function. In 1997, impairment to her ability to comprehend and follow instructions was moderate; impairment to her ability to relate to other people, degree of restriction of daily activities, constriction of interests, and ability to perform simple, repetitive and varied tasks was moderately severe; and impairment of her ability to perform complex tasks was severe. In 2001, her degree of impairment in most activities, including performing simple tasks, was moderately severe, and she was severely impaired in the ability to perform work even where contact with others will be minimal, and to perform complex, repetitive or varied tasks. In a progress note dated July 9, 2001, CX 27, Dr. Villalobos disagreed with Mr. Katzen’s assessment that Ms. Pomar could engage in any type of gainful employment based on her combination of physical and psychological impairments. He specifically stated that a job as a translator or

interpreter was totally unrealistic, in part because her ability to acquire new information is severely impaired because of her psychiatric symptoms. Dr. Miller also provided a rating dated July 9, 2001, CX 31, rating impairments to most of Ms. Pomar's abilities to perform work-related functions moderate to moderately severe.

The Claimant also countered the Employer/Carrier's vocational evidence with the testimony of Val Nardo, a vocational consultant who also provided a report, testified at the hearing, and was deposed after the hearing. CX 21; Tr. 97-134; CX 32. According to his resume, he has a Master's degree in special education and is a certified rehabilitation counselor who has worked in the vocational rehabilitation field since 1974. He first evaluated Ms. Pomar in 1997, and testified at her first hearing. CX 3 at 69-80. At that time it was his opinion that Ms. Pomar could return to some type of part-time gainful employment, although she could not work in the same capacity as she had before the injury. He next saw her in 2001, on four occasions between April and July. He was asked to review new medical, psychological and psychiatric information, and determine her current ability in the labor market. Mr. Nardo testified that in reaching his own opinion, he relied heavily on the opinions of Dr. Lichtblau, Dr. Pachon, Dr. Miller and Dr. Villalobos that Ms. Pomar is unable to work. He also reviewed the reports from Dr. Krost. In addition, he interviewed Ms. Pomar. Later, he also received the report of the labor market survey by Mr. Katzen. Based on the medical and psychological information he reviewed, Mr. Nardo opined that Ms. Pomar is not employable in the open labor market in any capacity. He disagreed with Mr. Katzen that Ms. Pomar can work as a translator, based in part on Ms. Pomar's and his own follow-up with some of the employers identified by Mr. Katzen. Mr. Nardo had worked with interpreters, but not translators. Based on his knowledge of the labor market and Ms. Pomar's capabilities, he did not believe she was capable of working as a translator.

On cross examination, Mr. Nardo admitted that he never considered whether Ms. Pomar could work as a translator until Mr. Katzen brought it up. Mr. Nardo did not look at any job market areas to identify whether Ms. Pomar is capable of employment, because he thought she was unemployable. It was his understanding based on his interviews that Ms. Pomar had not worked since she tried working for Dames in Panama. Ms. Pomar told him she was an inactive partner in Uno Designs, and that she never earned any money in that company. He did not review the balance sheet or profit and loss statements for Uno Designs, EX N. Nor did he review Ms. Pomar's tax returns. He did not accept Employer/Carrier's counsel's premise that income shown on her tax returns would necessarily be evidence of wage earning capacity. He admitted he had never heard of PHA Associates until the day of the hearing. He said he had tried to place people with fibromyalgia. He reiterated that he did not explore areas of employment because the medical information would not let him, and that he has to rely on what the doctors say. Asked about Dr. Krost's opinion that Ms. Pomar could work, Mr. Nardo stated that the two reports from Dr. Krost he saw were in total disagreement with each other. He gave less weight to Dr. Krost's second report stating that Ms. Pomar could work because Dr. Krost was performing as an independent medical examiner, unlike the treating physicians, whose opinions are entitled to greater weight; and because Dr. Krost's second report was prepared without a personal

appearance from Ms. Pomar.<sup>5</sup> He admitted that he did not perform any independent testing of Ms. Pomar. He did not agree that such testing would be appropriate in Ms. Pomar's case. He also said that the medical information precluded Ms. Pomar from being trained for any type of future employability. He was not aware of any standards for employability under the Longshore Act that would be different from the vocational rehabilitation standards applicable across the board under other statutes. He reiterated that according to the medical information that he reviewed, Ms. Pomar has no alternative wage earning capacity.

Mr. Nardo's post-hearing deposition was taken on October 26, 2001. In preparation for the deposition, he reviewed the depositions of Dr. Villalobos, Dr. Miller, Dr. Lichtblau and Dr. Krost taken on October 2, 2001. Mr. Nardo testified that in the field of workers' compensation, when a job is identified that an individual might be able to do, it is desirable to question the physician whether the job is suitable. Mr. Nardo believed that Mr. Katzen should have contacted Dr. Villalobos to see if the job of translator he was recommending was appropriate. Considering the limitations given by Drs. Lichtblau, Villalobos and Miller in their depositions, it was Mr. Nardo's opinion that Ms. Pomar would be unable to perform either open competitive or sheltered employment.

#### Suitable Alternative Employment

Disability under the Act is defined as "incapacity because of injury to earn wages which the employee was receiving at the time of injury in the same or any other employment." 33 U.S.C. § 902(10). Disability is an economic concept based upon a medical foundation distinguished by either the nature (permanent or temporary) or the extent (total or partial). Case law has established that in order to establish a prima facie case of total disability under the Act, a claimant must establish that he can no longer perform his former longshore job due to his job-related injury. *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 1038 (5<sup>th</sup> Cir. 1981); *P&M Crane Co. v. Hayes*, 930 F.2d 424, 429-30 (5<sup>th</sup> Cir. 1991); *SGS Control Serv. v. Director, OWCP*, 86 F.3d 438, 444 (5<sup>th</sup> Cir. 1996). He need not establish that he cannot return to *any* employment, only that he cannot return to his former employment. *Elliot v. C&P Telephone Co.*, 16 BRBS 89, 91 (1984). The same standard applies whether the claim is for temporary or permanent total disability. If a claimant meets this burden, he is presumed to be totally disabled. *Walker v. Sun Shipbuilding & Dry Dock Co.*, 19 BRBS 171, 172 (1986). In this case, the Employer/Carrier concedes that Ms. Pomar can no longer perform her pre-injury job, or even the consulting work which resulted in Judge Teitler's conclusion that Ms. Pomar was partially, rather than totally, disabled. See Employer/Carrier's Brief at 3, 13. Once the prima facie case of total disability is established, the burden shifts to the employer to establish the availability of suitable alternative employment. *P&M Crane*, 930 F.2d at 430; *Turner*, 661 F.2d at 1038; *Clophus v.*

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<sup>5</sup>In his report dated June 26, 2001, Mr. Nardo also stated that Dr. Krost's second report that Ms. Pomar could work was based in part on an inaccurate report from the carrier's attorney that Ms. Pomar "had been doing research in Indonesia and selling furniture, potted plants and books . . . personal items which she sold to help make ends meet . . ." CX 21.

*Amoco Prod. Co.*, 21 BRBS 261, 265 (1988). I conclude that the Employer/Carrier has failed to carry its burden to establish the availability of suitable alternative employment.

Judge Teitler based his decision that Ms. Pomar was partially, rather than totally, disabled based on her ability to do consulting work related to her former employment. Ms. Pomar's consulting business is no longer viable, and the record supports the conclusion that she never worked more than a few hours for Uno Designs. The only remaining possibility in the record is part-time work as a translator.

Mr. Katzen conceded that if Ms. Pomar's testimony that her Spanish vocabulary is limited was truthful, she would be unable to work as a translator. The Employer/Carrier put substantial weight on Mr. Katzen's notes and testimony that Ms. Pomar said she was "totally" bilingual. Taking the evidence regarding the interview as a whole, however, I do not believe that Ms. Pomar said she is totally bilingual. *See also* Tr. at 266. I find that Mr. Katzen concluded that she is totally bilingual, and made the entry in his notes, because she admittedly told him that she can think in Spanish and had used Spanish in her work. He also relied on the letter from Petro Hydro, which gave the understandable but mistaken impression that Ms. Pomar could perform technical translation. Mr. Katzen did not tell Ms. Pomar that he was considering work as a translator, Tr. at 267-268, which would have given her an opportunity to explain her limitations. I find that Ms. Pomar's testimony that she lacks technical vocabulary was truthful. Moreover, I reject the Employer/Carrier's argument that Ms. Pomar did not cooperate with Mr. Katzen. I conclude that Mr. Katzen's recommendation that Ms. Pomar could work as a translator was based on a misunderstanding of her facility in Spanish.

The Employer/Carrier also argues that Ms. Pomar's treating physicians' conclusions that she cannot work were vocational, rather than medical opinions. It is true that some of their opinions were couched in vocational terms. Nonetheless, their unanimous opinions that she cannot work are based on their medical judgments about Ms. Pomar's physical and mental condition. Furthermore, I conclude that Mr. Katzen was at least in part substituting his own judgment of Ms. Pomar's mental state for the opinions of her treating psychologist and psychiatrist. Although he did not unequivocally say so, I infer from his reports and testimony that he believed Ms. Pomar to be exaggerating her symptoms, including her mental confusion. He also placed great emphasis on Dr. Todd's comment that it would be beneficial for Ms. Pomar to work. Dr. Todd did not say that she could work, however; he said only that it would be beneficial "at some point." Moreover, Dr. Krost conceded that his opinion that Ms. Pomar could work was based on physical, but not psychological or psychiatric factors, and on the fact that she had worked after 1993. Ms. Pomar was working a maximum of 20 hours per week from home at the time of her 1997 hearing, and her condition has deteriorated since then. Given the extensive physical and mental symptoms described by Ms. Pomar and her physicians, the effects of medication, and the physical and mental limitations assessed by Drs. Lichtblau, Villalobos and Miller, I find Mr. Katzen's opinion that Ms. Pomar would still be able to maintain even half-time work on a flexible schedule to be entirely speculative, and not supported by the evidence as a whole.



As the Employer/Carrier has failed to establish the existence of suitable alternative employment, its request that compensation be decreased or discontinued must fail. I conclude that Ms. Pomar has established that her condition has worsened, and that she is now totally disabled. Having established a change in conditions, Ms. Pomar is entitled to modification of Judge Teitler's award. Ms. Pomar's last employment with Dames and Moore terminated after she became incapacitated in Panama. There is no evidence of suitable alternate employment after that time. She is entitled to permanent total disability benefits commencing on April 5, 1998, when she was hospitalized in Panama, and no longer able to work. As the parties stipulated to an average weekly wage of \$1,345.15, pursuant to Section 8(a), 33 U.S.C. § 908(a), her compensation rate for permanent total disability is \$901.25 per week.

### Interest

Claimant is entitled to interest on any accrued unpaid compensation benefits. *Canty v. S.E.L. Maduro*, 26 BRBS 147, 153 (1992); *Watkins v. Newport News Shipbuilding & Dry Dock Co.*, 8 BRBS 556, 559 (1978), *aff'd in part, rev'd in part sub nom. Newport News Shipbuilding & Dry Dock Company v. Director, OWCP*, 594 F.2d 986 (4th Cir. 1979). The purpose of interest is not to penalize employers but, rather, to make claimants whole, as employer has had the use of the money until an award issues. *Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP*, 594 F.2d 986, 987 (4th Cir. 1979); *Renfroe v. Ingalls Shipbuilding, Inc.*, 30 BRBS 101, 104 (1996); *Smith v. Ingalls Shipbuilding Div., Litton Systems, Inc.*, 22 BRBS 47, 50 (1989). Interest is mandatory and cannot be waived in contested cases. *Byrum v. Newport News Shipbuilding & Dry Dock Co.*, 14 BRBS 833, 837 (1982).

### Medical Expenses

Section 7(a) of the Act provides that "the employer shall furnish such medical, surgical, and other attendance or treatment . . . for such period as the nature of the injury or the process of recovery may require." 33 U.S.C. § 907(a); 20 CFR §§ 702.401, 702.402. In general, the employer is responsible for those medical expenses reasonably and necessarily incurred as a result of a work-related injury. *Ingalls Shipbuilding, Inc. v. Director, OWCP*, 991 F.2d 163 (5<sup>th</sup> Cir. 1993); *Perez v. Sea-Land Services, Inc.*, 8 BRBS 130, 140 (1978). The Board has interpreted this provision broadly. *See, e.g., Dupre v. Cape Romaine Contractors, Inc.*, 23 BRBS 86, 94-95 (1989) (holding employer liable for modifications to claimant's house as medical expenses). Section 7(b) of the Act authorizes the Secretary through his designees to oversee the provision of health care. 33 U.S.C. § 907(b); *see* 20 CFR § 702.407. Administrative Law Judges have authority to order payment for medical expenses already incurred, and generally to order future medical treatment for a work-related injury. They do not have the authority to specify a particular facility to provide future treatment. *McCurley v. Kiewit Co.*, 22 BRBS 115, 120 (1989).

Judge Teitler ordered the Employer/Carrier to pay reasonable, appropriate and necessary medical care and treatment for Ms. Pomar. The record contains extensive evidence regarding medical expenses the Employer/Carrier has failed to pay, some going back as far as 1993. Some

expenses Ms. Pomar paid herself, and others have gone unpaid altogether. *See* Tr. at 11-16, 40-41, 43-44, 45, 66, 71, 73, 79, 152, 157-161; CX 10, 13, 14, 16, 17, 18, 19, 22, 29, 30 and 34; and EX BB, CC and DD. Although the Employer/Carrier reserved the right to contest particular expenses for which the Claimant seeks reimbursement in post-hearing briefing, *see* Tr. at 11-16, it did not offer any evidence or argument to rebut the Claimant's presentation regarding medical expenses. I conclude that the Employer/Carrier is responsible for the following medical expenses sought in Claimant's Brief at 4-7. The Claimant does not seek a penalty on the medical expenses, but does seek interest. *See* Claimant's Brief at 4. Interest shall be assessed on all overdue medical expenses. *See Ion v. Duluth, Missabe and Iron Range Railway Co.*, 31 BRBS 75, 79-80 (1997).

Claimant seeks reimbursement to Ms. Pomar for doctor care, prescription drugs, travel, therapy and related expenses she paid. Claimant's Brief at 4. I find that the Employer/Carrier owes \$24,391.71 in reimbursements to Ms. Pomar for payments she made for reasonable, appropriate and necessary medical treatment, prescription drugs, travel, therapy and related expenses from 1993 to July 2001, plus interest. CX 22 and 34.

Claimant seeks reimbursement of a membership fee at a Bally gym. Claimant's Brief at 5. I find that Ms. Pomar's membership in the Bally gym to engage in exercise as recommended by her physician was a reasonable, appropriate and necessary medical expense. The Employer/Carrier shall reimburse Ms. Pomar \$114.98, plus interest. CX 4E.

Claimant seeks reimbursement or direct payments for treatment by Dr. Pachon. Claimant's Brief at 5. I find that the treatment provided by Dr. Pachon from January 18, 1998, to September 29, 2000, constitutes reasonable, appropriate and necessary medical treatment for which the Employer/Carrier is responsible. The Employer/Carrier shall pay Dr. Pachon \$2357.28, plus interest. CX 10. I find that the amounts paid by Ms. Pomar to Dr. Pachon were included in the gross amount of \$24,392.71 already found payable to Ms. Pomar. CX 34.

Claimant seeks reimbursement for therapy by a physical therapist. Claimant's Brief at 5-6. I find that the amounts paid by Ms. Pomar to C. Ybanez for therapy, CX 11, were included in the gross amount of \$24,392.71 already found payable to Ms. Pomar. CX 34.

Claimant seeks reimbursement for 1993 payments to Dr. Dickensheets and a hospital. Claimant's Brief at 6. I find that the amounts paid by Ms. Pomar to Dr. Dickensheets and the hospital in 1993 were included in the gross amount of \$24,392.71 already found payable to Ms. Pomar. CX 34.

Claimant seeks reimbursement to counsel and payment to Dr. Lichtblau for his services. Claimant's Brief at 6. At the deposition of Dr. Lichtblau, *see* EX BB, counsel for the Claimant stated that he had paid \$1950 for Dr. Lichtblau's services to evaluate the Claimant. That payment is documented in CX 14. Payments made to Dr. Lichtblau by Claimant's counsel on her behalf may be claimed as a cost in connection with counsel's fee petition. Counsel for the

Employer/Carrier stated that he would recommend to his client that Dr. Lichtblau be paid for treating Ms. Pomar; however, the amount of any outstanding bills was not specified in the record. I find that treatment by Dr. Lichtblau documented in the record on June 20 and July 17, 2001, constitutes reasonable, appropriate and necessary medical treatment for which the Employer/Carrier is responsible, plus interest. CX 14 and 15 and attachments to EX BB.

Claimant seeks reimbursement to counsel and payment to Dr. Villalobos for his services. Claimant's Brief at 6. I find that treatment by Dr. Villalobos on March 27, 1997, November 10, 1998, October 18, 2000, and April 25, May 30 and July 9, 2001 constitutes reasonable, appropriate and necessary medical treatment. The Employer/Carrier shall pay Dr. Villalobos \$1150.00, plus interest. CX 16 and attachment to EX CC. The \$600.00 payment made to Dr. Villalobos by Claimant's counsel on her behalf, for the evaluation dated January 15, 1997, *see* CX 16, may be claimed as a cost in connection with counsel's fee petition.

Claimant seeks reimbursement to Ms. Pomar and payment to Dr. Miller for his services. Claimant's Brief at 6-7. I find that treatment by Dr. Miller from May 24, 1999, to June 14, 2001, constitutes reasonable, appropriate and necessary medical treatment for which the Employer/Carrier is responsible. The Employer/Carrier shall pay \$5,925.00, plus interest, to Dr. Miller. CX 17, EX DD. I find that the amounts paid by Ms. Pomar to Dr. Miller for therapy were included in the gross amount of \$24,392.71 already found payable to Ms. Pomar. CX 34.

Claimant seeks payment to Dr. Todd for his neuropsychological evaluation. Claimant's Brief at 7. I find that the neuropsychological evaluation by Dr. Todd constitutes reasonable, appropriate and necessary medical treatment for which the Employer/Carrier is responsible. The Employer/Carrier shall pay \$1,900.00, plus interest, to Dr. Todd. CX 18.

Claimant seeks reimbursement to Ms. Pomar of fees she paid to the hospital in Panama in April 1998. Claimant's Brief at 7. I find that Claimant paid \$339.20 to the Panama Hospital Emergency Room, CX 19, which was not included in the gross amount of \$24,392.71 already found payable to Ms. Pomar. *See* CX 34. I find that the treatment was reasonable, appropriate and necessary medical treatment for which the Employer/Carrier is responsible. The Employer/Carrier shall pay \$339.20, plus interest, to Ms. Pomar.

#### Attorney's Fees

Having successfully established Claimant's right to modification, her attorney is entitled to an award of fees under section 28 of the Act, 33 U.S.C. § 928. The regulations address attorney's fees at 20 CFR §§ 702.132 – 135. Claimant's attorney has not yet filed an application for attorney's fees. Claimant's attorney is hereby allowed thirty days (30) days to file an application for fees and costs. A service sheet showing that service has been made upon all parties, including the Claimant, must accompany the application. The parties have ten days following service of the application within which to file any objections. The Act prohibits the charging of a fee in the absence of an approved application.

## ORDER

The request for modification filed by the Claimant is GRANTED. The request for modification filed by the Employer/Carrier is DENIED. I therefore ORDER:

1. The Employer/Carrier shall pay permanent total compensation to the Claimant beginning April 5, 1998, at a compensation rate of \$901.25 per week, in accordance with Section 8(a) of the Act, 33 U.S.C. § 908(a). Employer/Carrier shall receive a credit for amounts paid for permanent partial disability since April 5, 1998.

2. The Employer/Carrier shall pay past due medical expenses as follows:

- a. To Claimant, \$24,845.89.
- b. To Dr. Pachon, \$2,357.28.
- c. To Dr. Lichtblau, the amount due for treatment rendered June 20 and July 17, 2001.
- d. To Dr. Villalobos, \$1,150.00.
- e. To Dr. Miller, \$5,925.00.
- f. To Dr. Todd, \$1,900.00.

3. Claimant is entitled to interest on accrued unpaid compensation benefits and medical expenses. The applicable rate of interest shall be calculated in accordance with 28 U.S.C. §1961.

4. The District Director shall make all calculations necessary to carry out this order.

5. Employer/Carrier shall pay Claimant for all future reasonable and necessary medical care and treatment arising out of her work-related injury on July 1, 1993, pursuant to Section 7(a) of the Act, 33 U.S.C. § 907(a).

6. Claimant's counsel shall have thirty (30) days to file a fully supported fee application with the Office of Administrative Law Judges, serving a copy on Claimant and opposing counsel, who shall have ten (10) days to file any objections.

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Alice M. Craft  
Administrative Law Judge